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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 GARY CASTERLOW-BEY,

12 Plaintiff,

13 v.

14 TRAFFORD PUBLISHING COMPANY,

15 Defendant.  
16

CASE NO. 17-5459 RJB

ORDER ON PLAINTIFF’S  
MOTION REQUESTING  
SUBPOENA FOR NON-PARTY  
DISCOVERY AND ON MOTION  
FOR MEDIATION

17 This matter comes before the Court on the Plaintiff’s “Motion Requesting Subpena [sic]  
18 for Non-Party Discovery Pursuant to Fed. R. Civ. P. Rule 45 (b)(1), Rule 34 (2)(1), and 28  
19 U.S.C. § 1915(d)” (Dkt. 41) and Plaintiff’s motion for mediation under Local Rule W.D. Wash.  
20 39.1 (c)(1) (Dkt. 41-1). The Court has reviewed the pleadings filed regarding the motions and  
21 remaining record.

22 I. FACTS  
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1 This breach of contract case was filed by Plaintiff, *pro se*, who is a prisoner proceeding *in*  
2 *forma pauperis* (“IFP”). Dkts. 1, 6, and 7. He claims, in part, that the Defendant publishing  
3 company failed to pay him royalties on books that he wrote. Dkt. 7.

4 On July 21, 2017, the Court directed the Clerk of the Court to send to Defendant by U.S.  
5 mail at the address provided in the summons filled out by Plaintiff (Dkt. 10): copies of Plaintiff’s  
6 Complaint (Dkt. 7), the order directing service, the notice of lawsuit and request for waiver of  
7 service of summons, and a waiver of service of summons. Dkt. 13. On August 21, 2017, a  
8 waiver of service of summons was returned to the court, signed by “Melissa M. Bauer, Secretary  
9 Get Published! LLC, successor in interest to Trafford Publishing, LLC, 1663 Liberty Drive,  
10 Bloomington, IN, 47403.” Dkt. 21.

11 On September 5, 2017, Plaintiff filed a Motion to Appoint Mediator as Established by  
12 Local Rule 7 (f). Dkt. 23. In this pleading, Plaintiff stated that it is “[his] deepest desire to  
13 resolve this dispute amicably,” and so moved for appointment of a mediator. *Id.* On September  
14 13, 2017, Plaintiff filed a motion for default judgment, asserting that default judgment should be  
15 entered against Defendant for failure to appear and to be represented by an attorney admitted to  
16 practice before this Court. Dkt. 33. He also filed a motion for a temporary restraining order  
17 (“TRO”) against the Defendant. Dkt. 32. Plaintiff argued in that motion, “that until this lawsuit  
18 is resolved, it is not fair for Defendant to continue to gain financially from Plaintiff’s copyrighted  
19 work.” *Id.* Plaintiff noted the motion for September 13, 2017. *Id.* This motion was entered into  
20 the case docket after the Court denied, on September 14, 2017, Plaintiff’s motion for a TRO  
21 (Dkt. 26) “to stop Defendant from selling any of Plaintiff’s books nationally and internationally  
22 ‘until this civil suit is settled or otherwise resolved.’”

1 On September 19, 2017, Defendant appeared and filed an Answer to the Complaint. Dkt.  
2 28. On September 22, 2017, Defendant filed a response opposing Plaintiff's motion for a TRO.  
3 Dkt. 35. Defendant argued that the Plaintiff fails to show that he is entitled to a TRO, and in any  
4 event, it has "immediately placed a hold on all distribution of Plaintiff's books," so Plaintiff  
5 cannot demonstrate irreparable harm if the TRO was not granted. *Id.*

6 Plaintiff has also filed motions for TROs to force the Pierce County, Washington jail,  
7 where he is being held, to pay for his postage and copies on all legal documents. Dkts. 24 and  
8 26.

9 All Plaintiff's motions were denied. Dkts. 25, 27, and 37.

10 In addition to this case, Plaintiff filed similar actions related to the sale and distribution of  
11 his books against:

12 (1) Google.com and Amazon.com, *Casterlow-Bey v. Google.com, et al.*, Western District  
13 of Washington case number 17-5686 RJB, filed on August 30, 2017;

14 (2) Ebay.com, *Casterlow-Bey v. Ebay.com*, Western District of Washington case number  
15 17-5687 RJB, filed on August 30, 2017;

16 (3) Amazon.com, Google.com, Barnes and Nobles.com, Ebay.com, and Trafford  
17 Publishing Company, *Casterlow-Bey v. Amazon, et al.*, Western District of Washington case  
18 number 17-5833 RJB, filed on October 13, 2017; and

19 (4) Barnes and Nobles, *Casterlow-Bey v. Barnes and Nobles*, Western District of  
20 Washington case number 17-5834 RJB, filed October 13, 2017.

## 21 PENDING MOTIONS

22 In his current motion, Plaintiff seeks a subpoena duces tecum for "non-parties" so that the  
23 Plaintiff can "secure vital, critical discovery." Dkt. 41. He seeks "all records of sales of all  
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1 Casterlow–Bey books” from: Amazon.com, Google.com, Ebay.com, Barnes and Nobles.com,  
2 and Bargin [sic] Force Books Express. *Id.* Plaintiff also moves for mediation under Local Rule  
3 W.D. Wash. 39.1 (c)(1). Dkt. 41-1.

## 4 II. DISCUSSION

5 **Motion for Subpoena.** All discovery is subject to the requirements of Fed. R. Civ. P. 26  
6 (b)(1), which provides:

7 Unless otherwise limited by court order, the scope of discovery is as follows:  
8 Parties may obtain discovery regarding any nonprivileged matter that is relevant  
9 to any party's claim or defense and proportional to the needs of the case,  
10 considering the importance of the issues at stake in the action, the amount in  
11 controversy, the parties’ relative access to relevant information, the parties’  
12 resources, the importance of the discovery in resolving the issues, and whether the  
13 burden or expense of the proposed discovery outweighs its likely benefit.

14 Rule 26 (2)(C)(i) further provides that “[o]n motion or on its own, the court must limit the  
15 frequency or extent of discovery otherwise allowed by these rules . . . if it determines that . . . the  
16 discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other  
17 source that is more convenient, less burdensome, or less expensive.” Under Fed. R. Civ. P. 45  
18 (a)(1), a subpoena may direct non-party to a case to produce designated documents or  
19 electronically stored information. Particularly where, as here, service of the subpoena duces  
20 tecum is sought to be done by the U.S. Marshal, pursuant to 28 U.S.C. § 1915 (d), the issuance of  
21 the subpoena “is subject to limitations.” *See Heilman v. Lyons*, 2:09-CV-2721 KJN P, 2010 WL  
22 5168871, at \*1 (E.D. Cal. Dec. 13, 2010). Further, “[w]hile discovery is a valuable right and  
23 should not be unnecessarily restricted, the ‘necessary’ restriction may be broader when a  
24 nonparty is the target of discovery.” *Dart Indus. Co., Inc. v. Westwood Chem. Co., Inc.*, 649  
F.2d 646, 649 (9th Cir. 1980).

**Entities that Plaintiff is Suing in Other Cases.** Plaintiff’s motion for issuance of a

1 subpoena duces tecum for the sales records of “non-parties” Amazon.com, Google.com,  
2 Ebay.com, and Barnes and Nobles.com (Dkt. 41) should be denied. As he did in this case,  
3 Plaintiff has made the same or similar claims against Amazon.com, Google.com, Ebay.com,  
4 Barnes and Nobles.com related to the sales and distribution of his book in several other cases.  
5 *Casterlow-Bey v. Google.com, et al.*, Western District of Washington case number 17-5686 RJB;  
6 *Casterlow-Bey v. Ebay.com*, Western District of Washington case number 17-5687 RJB;  
7 *Casterlow-Bey v. Amazon, et al.*, Western District of Washington case number 17-5833 RJB; and  
8 *Casterlow-Bey v. Barnes and Nobles*, Western District of Washington case number 17-5834  
9 RJB. All parties in those cases are obligated to follow the Federal Rules of Civil Procedure  
10 regarding discovery. Plaintiff should not be permitted to shortcut those rules by filing a motion  
11 like this in a case that those parties are not named. Each of these entities’ sales records may be  
12 sought in the litigation in which they are parties, and so the discovery sought here is  
13 “unreasonably cumulative” and “duplicative” and should be denied. Rule 26 (2)(C)(i).

14 **Non-Party.** As to his motion for a subpoena duces tecum for the sales records of  
15 “Bargin [sic] Force Books Express” (Dkt. 41), Plaintiff makes no showing that he cannot obtain  
16 records of all sales of his book from Trafford, a “source that is more convenient, less  
17 burdensome,” and “less expensive” than this third party. “Nonparty witnesses are powerless to  
18 control the scope of litigation and discovery, and should not be forced to subsidize an  
19 unreasonable share of the costs of a litigation to which they are not a party.” *United States v.*  
20 *Columbia Broad. Sys., Inc.*, 666 F.2d 364, 371 (9th Cir. 1982).

21 Plaintiff’s motion for issuance of a subpoena duces tecum (Dkt. 41) as to all the entities  
22 should be denied.

23 **Motion for Mediation.** Under Local Rule 39.1 (c)(1), the parties may, by stipulation,  
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1 move “for mediation under this rule at any time.” While mediation may be a possible way to  
2 resolve this dispute, the Defendant did not join in this motion as is required in a stipulation. This  
3 motion (Dkt. 41-1) should be denied without prejudice.

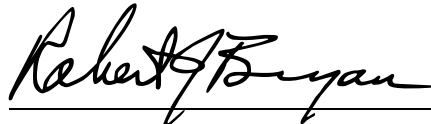
4 **III. ORDER**

5 It is **ORDERED** that:

- 6 • Plaintiff’s “Motion Requesting Subpena [sic] for Non-Party Discovery Pursuant  
7 to Fed. R. Civ. P. Rule 45 (b)(1), Rule 34 (2)(1), and 28 U.S.C. § 1915(d)” (Dkt.  
8 41) **IS DENIED**; and
- 9 • Plaintiff’s motion for mediation under Local Rule W.D. Wash. 39.1 (c)(1) (Dkt.  
10 41-1) **IS DENIED WITHOUT PREJUDICE**.

11 The Clerk is further directed to send uncertified copies of this Order to all counsel of  
12 record and to any party appearing pro se at said party’s last known address.

13 Dated this 30<sup>th</sup> day of October, 2017.

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15 ROBERT J. BRYAN  
16 United States District Judge  
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